

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JERRY BRENISER and GALE)
THURBER,)
)
Plaintiffs,)
)
v.)
)
WESTERN RECREATIONAL VEHICLES,)
INC., a foreign corporation,)
)
Defendant.)
_____)

No. CV-07-1418-HU

OPINION & ORDER

Justin M. Baxter
BAXTER & BAXTER LLP
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Portland, Oregon 97225

Attorney for Plaintiffs

HUBEL, Magistrate Judge:

Plaintiffs Jerry Breniser and Gale Thurber bring this action against defendant Western Recreational Vehicles, Inc., regarding an allegedly defective fifth wheel trailer plaintiffs purchased in August 2005. Plaintiffs bring a single breach of warranty claim under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 - 2312.

Both parties have consented to entry of final judgment by a Magistrate Judge in accordance with Federal Rule of Civil Procedure

1 - OPINION & ORDER

1 73 and 28 U.S.C. § 636(c). Plaintiffs move for summary judgment.
2 I deny the motion on the current record, but give plaintiffs leave
3 to file a supplemental motion.

4 BACKGROUND

5 Plaintiffs filed this action in state court and defendant
6 removed it to this Court. At the time, defendant was represented
7 by counsel. Later, I granted a motion by then-defense counsel to
8 withdraw, and gave defendant time to obtain new counsel. Defendant
9 has not done so. Thus, defendant is no longer represented by
10 counsel in this action. As a result, it may not appear in the
11 action. Local Rule 83.9(b) ("Unless otherwise specifically
12 provided by law or Court order, a corporation may appear or act
13 only through an attorney.").

14 In support of their motion for summary judgment, plaintiffs
15 submitted a Concise Statement of Facts (CSF). Defendant has not
16 responded to the motion. All facts asserted by plaintiffs in their
17 CSF are deemed admitted. Local Rule 56.1(f) (material facts set
18 forth in the concise statement of the moving party will be deemed
19 admitted unless specifically denied or otherwise controverted by a
20 separate concise statement of the opposing party).

21 The following facts are asserted by plaintiffs in their CSF
22 and supported by declarations and exhibits. On or about August 26,
23 2005, plaintiffs purchased a 2006 Alpenlite Portofino Fifth Wheel
24 from Highway Trailer Sales in Salem, Oregon. Pltfs' CSF at ¶ 1;
25 Breniser Declr. at ¶ 2. The Alpenlite was manufactured by Western
26 Recreational Vehicles, Inc. (WRV). Id.

27 At the time, a representative of Highway Trailer Sales advised
28 plaintiffs that the Alpenlite was covered by WRV's warranty and

1 that if the Alpenlite needed any repairs, plaintiffs should bring
2 it to Highway Trailer Sales for service under the WRV warranty.
3 Id.

4 After the purchase, plaintiffs discovered numerous defects and
5 damage to the Alpenlite. Pltfs' CSF at ¶ 2; Breniser Declr. at ¶
6 3. The defects included (1) a leaking roof and leaking slider
7 seals; (2) a leaking refrigerator; (3) faulty shower, moulding, and
8 vents; (4) defective microwave, furnace, and electronics; (5)
9 damaged or defective slider; (6) de-lamination at trailer-side
10 fifth wheel support; and (7) defective wheels. Id. Additionally,
11 as a result of one or more of these defects, the Alpenlite has
12 sustained water damage, mold, and damage to wiring and circuitry.
13 Id. The defects are continuing, and plaintiffs continue to
14 experience leaking and mold growth in the Alpenlite. Id.

15 Initially, plaintiffs returned to Highway Trailer Sales for
16 service under the WRV warranty. Pltfs' CSF at ¶ 3; Breniser Declr.
17 at ¶ 4. Because Highway Trailer Sales was unable to repair or
18 remedy all of the defects, plaintiffs contacted WRV directly and
19 were told to bring the Alpenlite to the WRV factory in Yakima,
20 Washington. Id. Plaintiffs did so, but WRV was unable and
21 unwilling to repair or remedy all of the defects and damage. Id.

22 Plaintiffs contend that as a result of WRV's failure to honor
23 the warranty on the Alpenlite, they have suffered damages totaling
24 \$88,623.68. Pltfs' CSF at ¶ 5; Breniser Declr. at ¶ 6. In his
25 declaration, Breniser details the damages as follows: (1) \$15,000
26 for trade in; (2) \$1,350 for down payment; (3) \$1,280.18 for
27 monthly payments; (4) \$69,976.82 for payoff balance; (5) \$269.48
28 for tires; (6) \$618.20 for storage; and (7) \$129 for a

1 dehumidifier. Breniser Declr. at ¶ 6.

2 On December 15, 2006, Western Recreational Vehicles, Inc., a
3 Delaware corporation, executed an Asset Purchase Agreement with
4 Western Recreational Vehicles, Inc., a Washington corporation, in
5 which the Delaware corporation purchased the Washington
6 corporation. Pltfs' CSF at ¶ 6; Baxter Declr. at ¶ 2; Exh. 1 to
7 Baxter Declr.

8 In 2007, by and through their attorney, plaintiffs again
9 requested that WRV repurchase the Alpenlite and refund plaintiffs'
10 out-of-pocket losses. Ptlfs' CSF at ¶ 4; Breniser Declr. at ¶ 5.
11 The parties were unable to negotiate a successful resolution to the
12 disagreement. Pltfs' CSF at ¶ 7; Baxter Declr. at ¶ 3.

13 STANDARDS

14 Summary judgment is appropriate if there is no genuine issue
15 of material fact and the moving party is entitled to judgment as a
16 matter of law. Fed. R. Civ. P. 56(c). The moving party bears the
17 initial responsibility of informing the court of the basis of its
18 motion, and identifying those portions of "'pleadings, depositions,
19 answers to interrogatories, and admissions on file, together with
20 the affidavits, if any,' which it believes demonstrate the absence
21 of a genuine issue of material fact." Celotex Corp. v. Catrett,
22 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)).

23 "If the moving party meets its initial burden of showing 'the
24 absence of a material and triable issue of fact,' 'the burden then
25 moves to the opposing party, who must present significant probative
26 evidence tending to support its claim or defense.'" Intel Corp. v.
27 Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991)
28 (quoting Richards v. Neilsen Freight Lines, 810 F.2d 898, 902 (9th

1 Cir. 1987)). The nonmoving party must go beyond the pleadings and
 2 designate facts showing an issue for trial. Celotex, 477 U.S. at
 3 322-23.

4 The substantive law governing a claim determines whether a
 5 fact is material. T.W. Elec. Serv. v. Pacific Elec. Contractors
 6 Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). All reasonable doubts as
 7 to the existence of a genuine issue of fact must be resolved
 8 against the moving party. Matsushita Elec. Indus. Co. v. Zenith
 9 Radio, 475 U.S. 574, 587 (1986). The court should view inferences
 10 drawn from the facts in the light most favorable to the nonmoving
 11 party. T.W. Elec. Serv., 809 F.2d at 630-31.

12 If the factual context makes the nonmoving party's claim as to
 13 the existence of a material issue of fact implausible, that party
 14 must come forward with more persuasive evidence to support his
 15 claim than would otherwise be necessary. Id.; In re Agricultural
 16 Research and Tech. Group, 916 F.2d 528, 534 (9th Cir. 1990);
 17 California Architectural Bldg. Prod., Inc. v. Franciscan Ceramics,
 18 Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).

19 DISCUSSION

20 I. Magnuson-Moss Warranty Act

21 The Magnuson-Moss Warranty Act (MMWA) "creates a federal
 22 private cause of action for a warrantor's failure to comply with
 23 the terms of a written warranty." Milicevic v. Fletcher Jones
 24 Imports, Ltd., 402 F.3d 912, 917 (9th Cir. 2005); 15 U.S.C. §
 25 2310(d)(1)(B) ("[A] consumer who is damaged by the failure of a .
 26 . . warrantor . . . to comply with any obligation . . . under a
 27 written warranty . . . may bring suit for damages and other legal
 28 and equitable relief . . . in an appropriate district court of the

1 United States[.]").

2 The MMWA distinguishes between full and limited warranties,
3 although it applies to both and each is considered a written
4 warranty. Milicevic, 402 F.3d at 919 (citing sections 2303(a)(1)-
5 (2), 2301(6), and 2310(d)(1)).

6 Under the MMWA, a written warranty is (1) a writing made by
7 the supplier of a product relating to the nature of the material or
8 workmanship of the product, and which promises that the product is
9 defect free or will meet a certain level of performance for a given
10 period of time, or (2) a writing in which the supplier agrees to
11 refund, repair, replace, or take other remedial action in the event
12 that the product fails to meet its specifications. 15 U.S.C. §
13 2301(6).

14 A "full warranty" under the MMWA is a written warranty meeting
15 the federal minimum standards set forth in section 2304 of the
16 statute, and which is conspicuously designated a "full (statement
17 of duration) warranty." 15 U.S.C. § 2303(a)(1). A "limited
18 warranty" under the MMWA is a written warranty that does not meet
19 the federal minimum warranty standards set forth in section 2304 of
20 the statute, and which is conspicuously designated a "limited
21 warranty." 15 U.S.C. § 2303(b)(1).

22 Although the MMWA sets forth remedies in 15 U.S.C. § 2304,
23 they are applicable only to "full" warranties. MacKenzie v.
24 Chrysler Corp., 607 F.2d 1162, 1166 (5th Cir. 1979); see also Gusse
25 v. Damon Corp., 470 F. Supp. 2d 1110, 1116 (C.D. Cal. 2007)
26 ("federal remedies described in 15 U.S.C. § 2304(a) only apply to
27 full warranties."). As noted in MacKenzie, the MMWA is "virtually
28 silent as to the amount and type of damages which may be awarded

for breach of an express limited warranty." MacKenzie, 607 F.2d at 1166. Thus, courts look to state substantive law to determine the appropriate remedies. Gusse, 470 F. Supp. 2d at 1117; see also Walsh v. Ford Motor Co., 807 F.2d 1000, 1016 (D.C. Cir. 1986) (unless expressly modified by Magnuson-Moss, state warranty law applies to all breach of warranty claims brought under the MMWA).

II. The Warranty

In an exhibit appended to a supplemental declaration, Breniser submits a copy of the applicable warranty. It is almost four pages long. Exh. 1 to Breniser Supp'l Declr. It provides, in pertinent part:

WESTERN RECREATIONAL VEHICLES, INC.
Fifth Wheel Trailer, Travel Trailer and Truck Camper

MANUFACTURER'S 1 YEAR LIMITED WARRANTY

(NONCOMMERCIAL USE)

1. General Terms of One (1) Year Limited Warranty

Western Recreational Vehicles, Inc. ("WRV") hereby warrants to the non-commercial consumer purchaser, for a period of one (1) year from the date of purchase . . . that the subject Unit shall be free of *substantial defects* in material and workmanship attributable to WRV, *provided however*, that WRV also provides a 5 year pro-rata limited warranty on defects in the structural integrity of the unit, as specifically set forth in Paragraph 2, below. *Components which are purchased by WRV for inclusion within the Unit normally carry the component manufacturer's own warranty; therefore, such items are not warranted by WRV in this Limited Warranty or any other express or implied warranty. It should be noted that some component parts might have a warranty period longer or shorter than one(1) year. WRV is no way is responsible for any warranty either written or expressed on these component parts.* **This Limited Warranty refers only to materials and component parts manufactured and/or adapted for uses by WRV and WRV's workmanship related to the design or construction of the unit, including installation of component parts into the unit.**

A substantial defect, assuming it is

otherwise covered under this Limited Warranty, occurs only when a part or system of the Unit fails to perform substantially within the design or manufacturing specifications for that part or system and which substantially limits the usage of the Unit.

In the event it is determined that there exists a *substantial defect* covered by this Limited Warranty, WRV agrees that it will repair the defect [and] pay reasonable parts and labor charges related to such repair. WRV reserves the right to deny payment or reimbursement therefore if it is not related to a *substantial defect*. WRV reserves the right to make, or permit the use of, new and/or remanufactured parts in making such repairs.

. . .

4. Warranty Recovery Limitations and Disclaimers

WRV shall **not be liable** for any consequential or incidental damages resulting from any defect, including *substantial defects*, in the Unit. WRV makes no warranty of any kind beyond that contained in this Limited Warranty. To the extent that implied warranties of merchantability and/or fitness for a particular purpose are found to exist by operation of law or facts, such are limited in duration to the warranty period of one (1) year from purchase by the original consumer purchaser. .

. . .

6. Items and Events Specifically Not Covered

The items and events set forth below, plus other items and events not listed but which are equivalent of the items and events listed, are specifically not covered by this Limited Warranty:

a) Items purchased, manufactured an/or [sic] installed other than at WRV's facility;

b) Batteries, tires, axles and wheels;

c) All domestic-type appliances, including, but not limited to, refrigerator, stove, oven, microwave, ice maker, water heater, furnace, television, stereo, radio, compact disc player, video cassette player/recorder, washer and dryer;

. . .

1 Id.

2 Although plaintiffs describe this warranty as a "full
3 warranty," it is a limited warranty under the MMWA. 15 U.S.C. §
4 2303(a)(2) (written warranty not meeting federal minimum standards
5 of section 2304 must be conspicuously designated "limited
6 warranty"). Here, the warranty is clearly labeled "limited," in
7 more than one place and initially appearing in bold and in larger
8 type than the remaining provisions. The warranty does not meet the
9 federal minimum standards for full warranties because, *inter alia*,
10 it limits the duration of any implied warranty and it does not
11 provide for the election of refund or replacement as a remedy for
12 a defect or malfunction after attempts to remedy. See 15 U.S.C. §
13 2304(a)(2) (under federal minimum standards for full warranties,
14 warrantor may not impose any limitation on the duration of any
15 implied warranty on the product); 15 U.S.C. § 2304(a)(4) (under
16 federal minimum standards for full warranties, warrantor must offer
17 replacement or refund).

18 III. Dispute Resolution

19 Although the MMWA expressly provides a private right of action
20 to file suit in a United States District Court, it also expresses
21 a Congressional policy of encouraging warrantors to establish
22 dispute resolution procedures to more expeditiously settle consumer
23 disputes. 15 U.S.C. § 2310(a)(1). The statute further provides
24 that if a warrantor establishes an informal dispute settlement
25 procedure which meets requirements established by the Federal Trade
26 Commission (FTC), the consumer may not commence a civil action
27 unless the consumer initially proceeds through the informal
28 procedure. 15 U.S.C. § 2310(a)(3)(I).

1 The warranty issued by WRV contains a dispute resolution
2 provision requiring that disputes be resolved through binding
3 arbitration. Exh. 1 to Breniser Supp'l Declr. at ¶ 9. There is no
4 evidence that plaintiffs submitted their dispute to arbitration.

5 In this case, however, the failure to use the dispute
6 resolution procedure set forth in WRV's warranty does not preclude
7 this action. Although the Ninth Circuit has not discussed the
8 issue, other courts have held that the dispute resolution procedure
9 offered by a warrantor under the MMWA may not require binding
10 arbitration.

11 In Browne v. Kline Tysons Imports, Inc., 190 F. Supp. 2d 827
12 (E.D. Va. 2002), the court explained that "[a] clear reading of the
13 statute evinces Congress' intent to encourage informal dispute
14 settlement mechanisms, yet not deprive any party of their right to
15 have their written warranty dispute adjudicated in a judicial
16 forum." Id. at 831. The court held that an informal dispute
17 settlement procedure used to resolve written warranty disputes
18 under the MMWA "must be a non-binding mechanism, which serves as a
19 pre-requisite, and not a bar, to relief in the court." Id.
20 (further citing the FTC regulations and noting that the agency's
21 interpretation supports a conclusion that written warranty claims
22 under the MMVA are not subject to binding arbitration).

23 Several other courts have reached the same conclusion. E.g.,
24 Rickard v. Teynor's Homes, Inc., 279 F. Supp. 2d 910, 921 (N.D.
25 Ohio 2003); Yeomans v. Homes of Legend, Inc., No. 00-D-824-N, 2001
26 WL 237313, at *6-8 (M.D. Ala. Mar. 5, 2001) (finding that Congress
27 intended to preclude binding arbitration of express and written
28 warranty claims under the MMWA); Pitchford v. Oakwood Mobile Homes,

1 Inc., 124 F. Supp. 2d 958, 962-65 (W.D. Va. 2000) (relying largely
2 on FTC's regulations finding binding arbitration to be
3 impermissible and on the MMWA's grant of access to a judicial forum
4 to find that the MMWA precludes binding arbitration of disputes
5 over written warranties); Raesly v. Grand Housing, Inc., 105 F.
6 Supp. 2d 562, 573 (S.D. Miss. 2000) (finding that MMWA precludes
7 binding arbitration of written warranty claims); Wilson v. Waverlee
8 Homes, Inc., 954 F. Supp. 1530, 1532 (M.D. Ala. 1997) (MMWA
9 precludes binding arbitration of MMWA claims, in part because it
10 provides access to a judicial forum and because the FTC regulations
11 have so interpreted it); but see Walton v. Rose Mobile Homes LLC,
12 298 F.3d 470, 479 (5th Cir. 2002) (MMWA does not preclude binding
13 arbitration of claims); In re American Homestar of Lancaster, Inc.,
14 50 S.W.3d 480, 490 (Tex. 2001) (MMWA's text, legislative history,
15 and purpose do not preclude binding arbitration); Results Oriented,
16 Inc. v. Crawford, 245 Ga. App. 432, 538 S.E.2d 73, 79-81 (2000)
17 (MMWA does not preclude arbitration of express and implied warranty
18 claims, unless arbitration clause is unconscionable), aff'd, 273
19 Ga. 884, 548 S.E.2d 342 (2000).

20 I follow the reasoning of the majority of the courts to have
21 considered this issue and conclude that the MMWA precludes binding
22 arbitration and thus the provision in the WRV limited warranty is
23 unenforceable.

24 IV. Asset Purchase Agreement

25 The summary judgment record filed by plaintiffs includes a
26 copy of the Asset Purchase Agreement between buyer Western
27 Recreational Vehicles, Inc., a Delaware corporation ("WRV-
28 Delaware"), and seller Western Recreational Vehicles, Inc., a

1 Washington corporation ("WRV-Washington"), dated December 15, 2006.
2 Exh. 1 to Baxter Declr. WRV-Delaware is the defendant in this
3 case, but WRV-Washington was apparently the manufacturer of the
4 Alpenlite.

5 Plaintiffs assert that under the Asset Purchase Agreement,
6 WRV-Delaware purchased all of WRV-Washington's assets and assumed
7 WRV-Washington's liabilities. In support, plaintiffs cite to
8 paragraphs 1.1 and 1.2 of the Asset Purchase Agreement.

9 These paragraphs, however, refer to other portions of the
10 Asset Purchase Agreement which plaintiffs fail to note or discuss.
11 In particular, paragraph 1.2, addressing the assumption of
12 liabilities, provides:

13 Assumption of Liabilities. On the terms and subject to
14 the conditions set forth in this Agreement, Buyer agrees
15 to assume, pay, defend, discharge, perform and otherwise
16 become responsible for all Assumed Liabilities at the
17 Closing. Notwithstanding anything to the contrary
18 contained in this Agreement, Buyer will not assume, be
19 liable for or have any responsibility with respect to any
20 Excluded Liability.

21 Exh. 1 to Baxter Declr. at ¶ 1.2.

22 Thus, to determine whether WRV-Delaware has assumed any
23 liabilities related to limited warranties, one must refer to the
24 definitions of "Assumed Liabilities" and "Excluded Liability."
25 Assumed Liabilities are defined to include,

26 subject to clause (xv) of the definition of "Excluded
27 Liabilities," Liabilities arising from or relating to any
28 product defects to, or returns of, products or goods sold
by the Company on or prior to the Closing Date, or the
failure of the Company or any such products or goods to
be in compliance with all applicable Laws or for any
violation of Law prior to the Closing Date[.]"

Id. at Art. VII. Here, WRV-Washington sold the product to
plaintiffs before the closing date.

1 Clause (xv) of the definition of "Excluded Liabilities,"
2 provides that "any and all Liabilities relating to or arising from
3 any claim, action, suit, charge, complaint, material grievance,
4 hearing, investigation or other proceeding (including any
5 arbitration proceedings) that is not set forth on Schedule 4.10 and
6 is threatened or pending against the Shareholders or the Company as
7 of the Closing Date" are excluded. Id.

8 The record reveals that before the December 15, 2006 closing,
9 plaintiffs had communicated their displeasure with the Alpenlite
10 several times. On November 4, 2005, plaintiffs wrote to Bruce
11 Lawrence and Doug Alfred to report several problems with the
12 Alpenlite and to ask for an explanation of the processes and steps
13 required to either exchange it or get their money back. Exh. 1 to
14 Breniser Declr.¹ In an email written sometime after December 27,
15 2005, plaintiffs told Gary Ford of WRV Customer Service, that on
16 December 27, 2005, they had contacted Oregon Attorney General Hardy
17 Myers for assistance in the matter. Id.

18 In an undated, and unaddressed letter by Breniser, Breniser
19 describes meeting with Jeff Ropper and Mr. Glazier (presumably Mike
20 Glazier, Vice President for Customer Service), when he took the
21 Alpenlite to "your facility" for work. Id. He further notes that
22 at the time, he told Glazier that if he (Breniser) was not happy
23 after the completion of the work, he would "follow other avenues to
24 secure the return of my investment." Id. In a March 1, 2006 email
25 to "rdoyle," Breniser repeats that he told Glazier that if Breniser
26

27 ¹ In future submissions, plaintiffs are ordered to paginate
28 any exhibits.

1 was not satisfied with the repairs, he would follow other avenues
2 to secure the return of his investment. Id. He also stated that
3 he would be contacting a lawyer for help. Id. He requests a total
4 refund. Id.

5 Included in the documents Breniser describes as containing a
6 "true copy of the warranty history for the Alpenlite, as well as
7 correspondence between me, Highway Trailer Sales, and WRV[,]"
8 Breniser Declr. at ¶ 4, is a copy of a letter from "Shield
9 Warranties," to Breniser regarding a particular contract and claim,
10 and noting Breniser's request for reimbursement on the claim. Id.
11 The request was denied because the components listed were not
12 covered. Id. Although this does not appear to be a claim under
13 WRV's Limited Warranty, it is unclear what this is.

14 On October 19, 2006, plaintiffs emailed their current counsel
15 regarding problems with the Alpenlite's wheels, as well as a
16 complaint about the furnace. Id. On December 29, 2006, plaintiffs
17 again emailed their current counsel with reports of problems with
18 the bedroom slide and a leak in the living room slide. Id.

19 On the present record, plaintiffs fail to establish that the
20 Limited Warranty applicable to their Alpenlite was a liability
21 assumed by WRV-Delaware, the defendant in this action because
22 plaintiffs fail to establish that none of the documents in Exhibit
23 1 to Breniser's Declaration and noted here are a "claim, action,
24 suit, charge, complaint, material grievance, hearing, investigation
25 or other proceeding." Additionally, the copy of the Asset and
26 Purchase Agreement plaintiffs submitted in support of their motion
27 fails to include any of the referenced schedules, including
28 Schedule 4.10. Thus, even if plaintiffs had made a claim, action,

1 suit, etc., it is impossible to discern from this record whether
2 such a claim, action, suit, etc., is one listed on Schedule 4.10
3 and thus, an assumed, rather than excluded, liability.

4 On this record, I cannot conclude as a matter of law, that the
5 Limited Warranty on plaintiff's Alpenlite was an assumed liability
6 under this Asset Purchase Agreement. Thus, summary judgment must
7 be denied.

8 Finally, as noted above, the record does not support a
9 conclusion that the warranty at issue here is a "full warranty,"
10 under the MMWA. Instead, it is a limited warranty. As a result,
11 plaintiffs' remedies are defined by state law. Gusse, 470 F. Supp.
12 2d at 1117 (courts look to state substantive law to determine
13 appropriate remedies for breach of written limited warranty under
14 MMWA); 15 U.S.C. 2311(b)(1) (nothing in the Act "shall invalidate
15 or restrict any right or remedy of any consumer under State
16 law[.]").

17 Plaintiffs fail to provide the Court with any citation to or
18 discussion of the applicable Oregon law regarding remedies for
19 breach of warranty. My own research suggests that Oregon's "Lemon
20 Law," Oregon Revised Statute § (O.R.S.) 649A.400 - 646A.418, may
21 not apply here because the Alpenlite is not a passenger motor
22 vehicle as defined in O.R.S. 801.360. The Lemon Law applies to
23 "consumers." O.R.S. 646A.402 (remedies under the law available to
24 a consumer). "Consumer" is defined as the purchaser of a new motor
25 vehicle normally used for personal, family, or household purposes.
26 O.R.S. 646A.400(1)(a). "Motor vehicle" is defined as "a passenger
27 motor vehicle as defined in ORS 801.360." O.R.S. 801.360 defines
28 "motor vehicle" as "a vehicle that is self-propelled or designed

1 for self-propulsion." Because the Alpenlite is a fifth-wheel
2 trailer, it is not self-propelled or designed for self-propulsion.
3 Thus, the state law remedies provided in Oregon's Lemon Law are
4 likely unavailable to plaintiffs for their MMWA limited warranty
5 claim.

6 While Oregon's Uniform Commercial Code governing sales,
7 including sales of consumer goods, found in O.R.S. Chapter 72,
8 appears applicable, plaintiffs again fail to address this in their
9 memorandum. In any supplemental motion, plaintiffs must address
10 what remedies are available under state law and why they believe
11 the damages they seek are recoverable under that state law. They
12 also must support the amounts delineated in Breniser's declaration
13 with some type of documentary and explanatory evidence. The
14 present record fails to explain exactly what these damages are and
15 why or how they are recoverable.

16 CONCLUSION

17 Plaintiffs' motion for summary judgment (#25) is denied.
18 Plaintiffs are given leave to file a supplemental motion for
19 summary judgment within two weeks of the date of this Opinion &
20 Order.

21 IT IS SO ORDERED.

22 Dated this 12th day of December, 2008.

23
24
25 /s/ Dennis James Hubel
26 Dennis James Hubel
27 United States Magistrate Judge
28